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**Attorneys for Plaintiffs,
DANIEL KEATING-TRAYNOR on behalf of himself
and all others similarly situated**

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

<p>DANIEL KEATING-TRAYNOR on behalf of himself and all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>AC SQUARE, COMCAST INC.; AFSHIN GHANEH; ANDREW BAHMANYAR; and DOES 1 THROUGH 60, inclusive,</p> <p style="text-align: center;">Defendants.</p>	<p>CASE NO: 08-2907MHP</p> <hr/> <p>PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS COMPLAINT FOR DAMAGES FOR VIOLATION OF FAIR LABOR STANDARDS ACT</p> <hr/> <p>CLASS ACTION 29 USC 216(b)</p> <hr/> <p>Date: August 25, 2008</p> <p>Time: 2:00 p.m.</p> <p>Honorable Marilyn Hall Patel</p>
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PLAINTIFF HAS FILED AN AMENDED COMPLAINT MAKING MOOT THIS MOTION

Plaintiff has been attempting to obtain Defendants' agreement to merge the complaint in this action with the complaint in the related removed action being Case No. 08-3035 MHP. This makes sense from a standpoint of judicial economy because this complaint was filed only one day after the complaint in Case No. 08-3035 and both contain the FLSA causes of action against the same individuals and entities. As to both of these two complaints, Defendants could then make one motion to dismiss and save time and expense for all concerned. To date, defendants

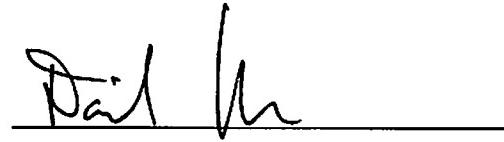
have declined to consent.

1 Plaintiff files this opposition solely as a protective device since he has filed a First
2 Amended Complaint in this action. The First Amended Complaint moots the Motion to Dismiss
3 already filed in this action. The First Amended Complaint notes more specifically that Plaintiff in
4 fact worked over 40 hours in a work week without being paid overtime, and that class members,
5 most or all, worked over 40 hours a week in one or more work weeks without being paid
6 overtime. The First Amended Complaint also gives additional allegations as to how the
7 individual defendants benefitted personally from the scheme to deprive Plaintiff and the class of
8 their lawful wages. The First Amended Complaint also shows that the conspiracy included overt
9 acts occurring less than three years before the complaint in this action was filed. The First
10 Amended Complaint also shows that any statute of limitations claim is equitably tolled by
11 Defendants knowledge of the allegations that form the core of this action, and Plaintiff's intend
12 to bring legal action as a result, as early as July 7, 2006. The First Amended Complaint also
13 shows that its claims relate back at least to June 29, 2007 (when the lawsuit was filed in San
14 Mateo Superior Court as a class action) and in fact to the lawsuit filed in San Mateo Superior
15 Court on July 7, 2006. The First Amended Complaint also shows that an additional conspirator in
16 the scheme to deprive Plaintiff and the class of their lawfully due wages, including overtime and
17 minimum wages under the FLSA, was AC Square's attorneys. Their conduct occurred both as
18 part of the litigation, but also through conduct outside of litigation. The attorneys' conduct did
19 not consist solely of defending AC Square and the other defendants against past conduct, (in
20 which case Plaintiff would not name the attorneys as coconspirators) but also enables, aids, abets
21 and encourages AC Square and the other defendants to continue to engage in conduct that is
22 clearly unlawful under both United States and California law. So as to not disrupt the attorney-
23 client relationship between AC Square et al., and their attorneys, Plaintiff has chosen not to name
24 the attorneys as defendants at this time.
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2 **CONCLUSION**
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4 Plaintiff respectfully requests that the court take the Motion to Dismiss off calendar.
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6 Dated: August 4, 2008
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10 DANIEL BERKO
11 Attorney for Plaintiff DANNY TRAYNOR-
12 KEATING on behalf of themselves
13 and all those similarly situated
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